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THE PUBLIC VIEW OF THE RAILROADS' NEED FOR AN INCREASE OF RATES

The fact that my subject is prescribed simplifies my task greatly, for under the circumstances I do not intend to produce an array of facts, nor even to give my own opinion as to whether or not the railroads, in the interest of efficiency and adequate service, need an increase of rates. My aim is rather merely to act as a sort of mirror to reflect the attitude of the great American democracy toward this question; and to express, perhaps, now and then, my opinion of what that democracy is about to do, without committing myself as to whether I think the impending action wise or unwise, just or unjust. In short, I distinctly refrain at this time from entering into the question of whether economic conditions justify or require an increase of rates in the interests of the public or not. I propose, in fact, to confine myself exclusively to a consideration of how the difference in opinion between the railroads on one side and the public on the other grew up, and to call attention to some of the more palpable and significant implications of this difference.

I wish to make two preliminary statements: First, I have recently completed visits¹ to all the more important regulating

¹ This was in connection with an investigation undertaken by the National Civic Federation (New York, 1911-14) under my direction. See *Draft Bill for the Regulation of Public Utilities* (including railroads) published by that association November 11, 1914.

commissions from New York to California and from Massachusetts to Texas. I have attended hearings, examined records, and talked to commissioners and to an endless number of officers and attorneys of the companies. I perhaps have read as many of the decisions of the commissions and public investigations in this field as anyone not vocationally connected with the industries or trying to make money out of them.

The second statement is in the nature of a warning. I shall have much to say with regard to the attitude of the American public toward the owners and managers of our transportation system, often implying that the latter are, in the opinion of the public, acting adversely to the permanent interests of society. Unlike the other portions of my paper, I wish this part to be a distinct expression of my personal views. It is my opinion, and I believe increasingly the opinion of the great majority of the people, that these men, where they are accused of acting contrary to the permanent interests of society, are neither better nor worse than the average American citizen. They are made of the same clay, moved by the same impulses and ambitions, and they aim at the same results. To understand why their acts are so often disapproved by the people, we must look at the historical development which put these men in their present circumstances, and the peculiar traditions, sentiments, and temptations which surround and dominate them. Let us then ask candidly and fearlessly whether those traditions and sentiments have come from circumstances which have entirely disappeared since the traditions were formulated, and inquire, further, whether the spirit and acts complained of today were equally injurious under the circumstances which gave rise to the traditions guiding and controlling the railroad managers today.

However the American populace may condemn the attitude of the courts on some social questions, they believe the courts absolutely correct in declaring a railroad, however owned, an instrument of the sovereignty, for the accomplishing of certain vitally necessary public functions. The law, which is perfectly clear at this point, meets with popular approval. Whoever owns the railroad, the railroad gets its right to be a corporation, to exercise the

right of eminent domain, and in fact collects taxes¹ (for that is what railroad charges really are) in order that it may serve the public. The attitude of the public is that if the private owners cannot reconcile themselves to this fact, and cannot make a satisfactory profit while using railroads as instrumentalities of the common welfare, they ought to let go and permit the public to own and operate the railroads through government officials. This appears to me a fair statement of the disinterested public attitude toward the railroads. But after the agitation of more than forty years in favor of specifically controlling the railroads, after establishing the Interstate Commerce Commission, and after setting up administrative commissions in nearly all of the states, with a view to bringing the railroads into the position just mentioned, the public still has a feeling that the owners and managers of the railroads generally regard the industries as private ones in which the private interest occupies pre-eminently the first place.² The managers not only look upon the property as private, but they manage it in a way that the public does not longer consider proper, even in the case of industries admitted by all to be merely private. This makes a thoroughly irreconcilable conflict between the public and the railroads. So long as the two parties are acting, however honestly, on mutually exclusive doctrines of property rights and of business and social ethics, there is no hope of social peace or of general prosperity.

If the railroad, because privately owned, is to be regarded, in fact, as a private investment, made primarily for the benefit of the investor and only incidentally for serving the public—an investment which he may properly regard as he regards his investments in ordinary lands, or houses, or factories—then the present feeling of the railroad managers is understandable. They believe that they are unnecessarily and unjustly interfered with, hampered, and annoyed in their private affairs by the government and by the

¹ The making of a rate is, in ultimate analysis, the exercise of a taxing power on commerce (73 Fed. 709).

² "Those who are controlled would not be human if they did not think the control often unjust and oppressive, even when it is not so, because they look at things from their own point of view, and do not appreciate the public interests."—Ely, *Property and Contract*, I, 350.

agitation of public opinion. Under such a philosophy regulation is an impertinence;¹ for one ought to be allowed to do with his own as he pleases in the case of railroads exactly as in the case of any other private property. If, however, the economists, the law, and the great public are correct in believing that the railroads are public instrumentalities, intimately connected with the national life and with the welfare and prosperity of each individual citizen, and must be used for social ends, it is utterly unthinkable and intolerable² that their owners should have the same freedom of dealing with that property, as until recent years we have allowed in the case of property not affected by a public interest. Taking this view, the public is inclined without hesitation or reason to deny the railroads any increase of rates or other economic or legal power until those who control the railroads show greater inclination to submit to more effective regulation, that is, until the railroads admit that the public has a paramount interest in the railroads.

If we take a brief historical view of the origin and development of this conflict we can easily understand how the difference of opinion arose and how the railroad men came naturally into their present position and attitude of mind. When the railroad was invented, the nation controlled a continent of unparalleled variety and extent of resources. The business world was in its infancy. The power of a railroad to do business and to affect the life of the citizen was wholly untested and even unsuspected. Resources seemed, to the most conservative, unlimited and inexhaustible, and measured by the experience of the whole world, they were in fact virtually limitless. In the conflict among nations for power and domination, it was essential that, by the most rapid steps, the natural resources should be taken up, appropriated, and developed,

¹ Cf. B. L. Winchell, chairman Executive Committee, Frisco System, in *Atlantic Monthly*, December, 1912, as follows: "But the public has unfortunately tried to adopt a policy of regulation that will prevent railway officers from doing anything that they ought not to do, and has overlooked the fact that to hedge men about with restrictions of this sort may at the same time so narrow their freedom of action as to make it impossible for them to do many things that they ought to do."

² "Manifestly under this principle all that stands between the shipper and extortion is the wisdom and the good sense of the traffic manager who makes rates."—Document No. 1509, I.C.C. Reports, p. 42.

and that population should be increased. The whole spirit of that time demanded the quickest development of resources and the largest increase of population. The supposedly unlimited resources and the sparseness of existing population furnished the basis for such doctrine.

The prevailing theory of progress, under those conditions, was that the greatest developer of resources was the greatest benefactor. The Constitution had been drawn and interpreted with the express purpose of enabling men to produce and acquire property with as little restriction as possible, and to protect them in the possession of their property rights. So long as individual or corporate appropriation of lands, mines, or other resources did not exhaust the supply, the doctrine of the public benefits from rapid exploitation of natural resources was reasonably true, and the greatest exploiter was the most useful citizen; for he did not by his acquiring and exploiting of natural resources deprive anyone else of having an equal opportunity, or of accomplishing like results and attaining like fortune and glory.

Three generations of this spirit and practice begot in the minds of the successful business men a tradition and a belief that they were the greatest benefactors of the nation; and the more they slashed, appropriated, and developed, and the more rapid the increase of population, the greater was the increase of wealth, and the better it was not only for themselves but for the community in general. This doctrine involved the theory, reasonably true then, but wholly impossible under the changed conditions of today, that the large wealth thus created would, under natural laws, somehow be most widely, if not equally, distributed. But development cannot go on under such circumstances without creating an enormous spirit of speculation, in the strictest sense of the word speculation. In fact, the development of the natural resources at anything like the rate at which they did develop inevitably led to and developed such speculation. Speculation was the life and spirit of the pioneer circumstances. But when the railroads became sufficiently developed, and the spirit of speculation had become full-fledged, the public began to suspect that the degree of speculation that was going on was wholly inconsistent with the

theory that the railroad was meant primarily to serve the public, and that to make a railroad a mere object of private speculation was to endanger the very foundations of progress. The public woke up to the tremendous possibilities of the railroad as the determining factor in giving direction to our whole economic, political, and social life.

This is the conflict between the public and the railroads. Those really in control consider the railroad property itself as a proper subject of speculation, as the people of three generations ago did when the railroad came in; and, furthermore, they sometimes regard the control of a railroad as chiefly desirable to enable the one who holds it to carry on speculation, not only in the securities of his own company on stock exchanges for the benefit of his company as well as for private account, but as the chief means of accumulating a large fortune by speculating over the whole realm of human activity.

At this point we must make a sharp distinction between the speculative control and the actual operating officials. There has certainly been a great change for the better in recent years in the minds of the operating officials. If these men could be liberated entirely from the financial control of Wall Street they would doubtless operate the railroads chiefly as instruments of transportation. But so long as the financial control is superior to the operating force, it will exercise a dominating influence on the operation. For the supposed needs of the speculators determine the whole policy of the road as to purchasing property, making extensions, buying supplies, keeping of accounts, declaring of dividends, and so on.¹

The people are becoming very inquisitive, and they are asking with increasing insistence how it is that a man who gets control

¹ On these outside interests, the Interstate Commerce Commission remarks: "The fact is, and this is fully shown of record, that the connection of some of the high officials of the New York Central lines with these coal properties resulted in no small demoralization in service, and led to a belief on the part of minor officials that, in permitting these abuses to go on, they were promoting the interests of their superior officers. . . . We see no other possible explanation, so far as minor officials and employees are concerned, respecting some of the abuses herein above described."—63d Cong., 2d sess., House Document No. 1124, p. 48.

of a great railway system leaves a fortune when he dies of anywhere from five million to two hundred million dollars. The people even do some mathematics and ask whether the fortune left by the late E. H. Harriman could possibly be accumulated as a result of Mr. Harriman's salary, or could arise chiefly, or wholly, from interest and dividends on any securities or property he ever held. Notwithstanding the unquestioned progress that has undoubtedly been made in the last thirty years in checking some of these abuses, the public believes that the so-called railroad fortunes were not made in any attempt to develop railway systems or to make those systems serve the public, but that they were gained by speculation,¹ such as the public of today frowns upon when connected with property which they regard as strictly private property. That the public received much benefit from this system of management and that the owners developed great skill goes without saying.

I repeat that the railroad managers are no better and no worse than other people are, but, by their bringing up, by their traditions and the circumstances under which they are placed, they honestly believe they are doing God's service and developing the country, when they are engaged in practices that are considered today by the public absolutely inconsistent with human progress, with equality of opportunity, or even with the maintenance of democracy. The managers are still living in the days of state lotteries, and church lotteries, and free rum at the raising of church parsonages. They regard themselves as engaged in private business, and entitled to as great freedom in speculation and rate manipulation as a private citizen is in an ordinary competitive manufacturing business. They are still acting in the spirit of absolutism, and resenting in their hearts—where they do not resent with their tongues—the interference of the government in what they believe to be their

¹ It is a well-established fact that of the total issues of the New Haven under Mellen, and the Union Pacific under Harriman, not less than \$519,000,000 were issued, not for developing the respective properties, but for purely speculative purposes. The one speculation was highly successful financially, the other pitifully disastrous. But such speculation, whether successful or not, determines the operation and accounting of the roads—the whole business policy. Furthermore, it thoroughly demoralizes the whole operating force. See 63d Cong., 2d sess., Senate Document No. 544, p. 2, and Brandeis, *Other People's Money*, pp. 165-67.

private affairs. They are keenly alive to the fact that the public, in attempting to regulate, places heavy expense and annoyance on them. All this they resent, not knowing that the ideas of private property must be modified to the extent necessary to make this regulation effective,¹ or that their property must become, in fact and in law, public property.

The public knows well enough that this attitude must be changed and the managers be converted and become willing to manage these great industries on a different theory or philosophy, if the ownership is to remain in private hands. I could not think so ill of the railroad managers of today as I should have to think if I believed the practices which they are engaged in, and which are regarded by the public as injurious, were so regarded by themselves. As was so well shown by the Interstate Commerce Commission in the Spokane rate case, the traffic manager's idea of fair railroad rates is what the traffic will bear, which, being interpreted, is what the traffic manager, who admits that he had never attempted to arrange rates on a scientific or cost basis, *thinks* is fair.² This leads the public to think that the railroad managers believe that absolutism ought still to exist in industry and that the public ought to approach the railroad managers in the spirit in which Bossuet addressed Louis XIV: "O King, use your power easily, for it is given to you of God for the welfare of men. Exercise it with humility. Do not forget justice, for God, who gives you irresponsible power over others, holds you responsible to Him. The greater your power, the more severely will he judge you at the last day."³ Or, to express it in another way, the railroad manager today appears to the public to be in the attitude of mind, expressed twelve years ago by President Baer, that the public and the labor unions ought to have nothing to say about the conditions or wages of labor, but that the matter ought to be left to the wisdom and benevolence of

¹ Cf. Ely, *op. cit.*, I, 347.

² "This necessarily gives the carrier the right to measure the amount of profit which the shipper may make and fix its rate upon the traffic manager's judgment as to what profit he thinks will be permitted."—I.C.C. Reports, Western Advance Rate case, p. 43.

³ Cited in J. R. Commons, *Labor and Administration*, p. 62.

the employers.¹ But popular opinion in this and all other advanced countries has advanced beyond absolutism in government, politics, and business, and has determined that it is inconsistent with the liberty of the citizen to leave the railroad management unregulated by public authority.²

In short, the railroad managers seem to regard themselves as entitled to the same absolute power that King James I claimed for himself in the speech from the throne, in 1609:

God hath power to create or destroy, to make or unmake at his pleasure, to give life or to send death; and to God both body and soul are due. And the like power have kings: they make and unmake their subjects; they have power of raising and casting down, of life and of death—judges over all their subjects, and in all causes, and yet accountable to none but God only. They have power to exalt low things, and abase high things, and make their subjects like men of chess: a pawn to take a bishop or a knight, and to cry up or down any of their subjects as they do their money.³

Such power the railroads claim and sincerely believe they are entitled to, while an unregulated, privately owned railroad has in fact quite as much power of raising up and casting down⁴ as was ever claimed by the most absolute Stuart.

I here give a few typical statements from men who are supposed to speak for the railroads. The latest utterance of President Fairfax Harrison of the Southern Railway that has come to me, in complaining of the public attitude toward the railroad speaks

¹ "I beg of you not to be discouraged. The rights and interests of the laboring man will be protected and cared for—not by the labor agitators, but by the Christian men to whom God in His infinite wisdom has given the control of the property interests of the country, and upon the successful management of which so much depends." Private letter, cited in Ely, *op. cit.*, II, 733.

² Disinterested students may well ask today whether regulation, if made effective according to present public opinion, may not so reduce the chance of large speculative profits in railroading as to make private investment in this field unattractive in view of the supposed opportunities in this and other countries for large gains in other enterprises. If this should prove to be the case, the alternatives left would be unregulated private ownership or public ownership. Under present conditions, there can be no doubt which the public would choose.

³ Cited by Häusser, *The Period of the Reformation, 1517-1648*, p. 607.

⁴ "He [the traffic manager] determines gains of production and consumption, the profits of the producer and the cost to the consumer; he makes his rates if he so pleases to offset and nullify the effect of import duties and determines the extent and character of our foreign markets."—I.C.C. Reports, Western Advance Rate case, p. 42.

of the "poisonous, political, economic, orgiastic fury in laws and regulations, such as no virile man would ever accept for the conduct of his own private business."¹ The implication is clear that he regards the railroad as purely private business. In another place in the same address, he says: "The principle of the interference of government in private industry is not likely to be applied, chiefly, merely to railroads, or even to those accumulations of other forms of industry, known as trusts."²

The same spirit is manifested by President Ripley, of the Atchison, Topeka & Santa Fe, one of the chief spokesmen in the rate cases. Almost in the first sentence, in a recent address before the Texas Welfare Association, he demands the repeal of the Texas stock and bond law. This can only mean that he resents any and all effective regulation. One would think that he might have learned fear if not wisdom from his experience in Texas during the last two decades. Let us turn our attention to the Texas situation for a moment.

The people of Texas today have the Texas railroads entirely bottled up.³ That any building whatever can go on in Texas is due solely to the complexity of our federal system and interstate comity, and to the holding companies about which there is such popular complaint today. The fact is that until about twenty years ago, the railroads of Texas dominated the state, made the law in their own interests, interpreted the law to their own advantage, and even violated their own law, thus made and interpreted, with impunity, whenever they considered it financially profitable to do so. They were masters of the state, and were proceeding in a way that no civilization could long endure without reform or bloody revolution. Theirs was the customary, pioneer defense that they were developing railroads and the state, and aiding the pro-

¹ *The Prejudice against the Railways*, p. 1.

² *Ibid.*, p. 4.

³ "You offer no opportunity for profit, and doubtful security for the principal of the investment. The income of the investor is limited by one political body, while another political body leads him into all manner of expensive restrictions, and much of the earnings are consumed by damage payments far in excess of those inflicted in other states."—E. P. Ripley on Texas railroads, *Railway Age Gazette*, May 24, 1912, p. 1152.

duction and accumulation of property.¹ About twenty-five years ago, there took place a genuine social revolution under the leadership of the late Governor Hogg. He undertook, not only to prevent further abuses, but to squeeze the existing water out of the capitalization and to punish the railroads for their past misdeeds. He created the Railroad Commission, forced through the stock and bond law, and got these laws upheld by the courts.

The railroads regarded the valuations when made as wickedly inadequate and wholly unjust, but they despised the whole movement for regulation to such a degree that they did not protest the valuations or even appear at the hearings.² Later investigations have shown that their one idea was to go into politics on the old basis, control the elections, abolish the Commission, and repeal the valuations. But Governor Hogg beat them at their own game in three different campaigns. I suspect the people of Texas are still voting for Governor Hogg, and are still bent on punishing the railroads at all hazards. In other words, it is a state of warfare in Texas. For many years the railroads were victorious; now the populace is victorious, and yet the speeches of the presidents of the two largest railroad systems in Texas, made only two years ago, show that the railroad managers are not willing to make peace on any terms except unconditional surrender on the part of the public and a return to the chaos and degradation of a generation ago. In other jurisdictions the public has overlooked the past and merely tried to secure for the future such action from the railroads as is in accordance with existing ethical standards.

A further evidence of the unchanged attitude of the railroads is the fact that in the Democratic state convention of Texas in 1912—in Texas as everybody knows a Democratic nomination means an election—the railroad group, using the old philosophy and the old tactics in the convention, are said to have put on the committee on resolutions, charged with drafting the platform, a

¹ Cf. 26 I.C.C. 498: "We are told by the Colorado lines that they have used their state passes as a means of building up the country and encouraging industrial and other enterprises in that state."

² Cf. W. D. Williams of the (Texas) State Railroad Commission in *Bulletin of the University of Texas*, No. 236, June 22, 1912, p. 118.

clear majority of railroad attorneys of record.¹ They then forced through a pro-railroad platform, clearly at variance with the public sentiment of the state, and a platform which some of the more important candidates, when nominated on it, openly and formally repudiated and publicly attacked throughout the whole campaign. The people of Texas prefer open hostilities to unconditional submission to railroad domination, believing that decency, as the people understand decency, is of more importance than material prosperity and the creation and accumulation of wealth in a few hands. I submit that until the railroads change their views and their methods there is something to be said in favor of the people of Texas. It is quite true that public hostility to the railroads has checked material development and stopped railroad building, so far as the building cannot be carried on in Texas in spite of Texas laws by outside financing. In the face of such facts is it probable that a mere cry, or even a clear demonstration, that the present law checks building, and prevents development of the state is likely to cause the people to let up or surrender?²

Mr. Frederick P. Fish justifies the popular uprising, not only in Texas, but generally, when he says,³ "that business concentration has given the corporation a capacity for great power and influence outside the field of its legitimate business." He adds, "There is no doubt that our great corporations have unwisely and to the detriment of the public interfered in politics, influenced legislation, and dominated the affairs of the community, to an extent that was intolerable."⁴ But he is thoroughly convinced that those days are past, asserting, "In all these matters relating to political, legislative, and social control, they have surely learned their lesson."

¹ Oral statement of a candidate on that platform for one of the most important state offices.

² It is generally alleged that this strife has reached such a pass that in personal injury cases against the railroads juries disregard both the law and the facts and decide against the railroad.

"Personal injury and damage payments on our Texas lines are four times greater on any basis of comparison than on the average of other lines with which I am connected."—E. P. Ripley, *op. cit.*, p. 1151.

³ *Proceedings of Chamber of Commerce of U.S.*, annual meeting of February 12, 1914, p. 45.

⁴ *Ibid.*, p. 46.

Along the same line, we are told in almost every daily paper throughout the land that the roads are suffering today because of the misdeeds of a few of the roads, or because of a condition of affairs that no longer exists. The public mind is not yet entirely convinced that the misdeeds have become exceptional or sporadic. It demands more than smooth words and concealment of facts to cause it to let up on its vigilance. The public has seen too many desirable municipal and other reforms dropped prematurely on the charge that revelations of actual conditions or the discussion of evils—what the railroads call agitation—would hurt business. The public has, in short, made up its mind that not the man who cries “fire” when the house is on fire, but the man who started the fire is the real disturber of the social peace.

It is not my desire to present in any detail the history of the New Haven railroad. I merely call attention to the fact that after the public investigations were begun, but before the results were made known, one of the most intelligent, high-minded, and public-spirited men on the directorate of that road put in the better part of a half-day endeavoring to convince me that it was the duty of the economists to try to check the brutal and stupid agitation against big business and successful business, and alleging with frequent reiteration that, if the New Haven railroad should be wrecked, it would be wholly and simply because of radical social agitation. The directors of that road have not yet been tried criminally, but the Interstate Commerce Commission and other branches of the government have reported on the system. It already appears that the agitation did not begin early enough and that the real condition was too long concealed for fear of hurting business. In fact, all the demagogism and radical agitation and muck-raking of the last generation, in the absence of a just cause for it, could not have injured that railroad or business in general so much as the action of the directors of the New Haven system has done.

Whatever one may think of government regulation, all disinterested students know that the personnel of the Interstate Commerce Commission is above reproach or suspicion, and that the experience of the commissioners and their growing sense of responsibility, to say nothing of their fear of having their decisions

overthrown by the courts, have caused them to be highly conservative and even cautious. The public believes that it is not too much to say that in view of the danger of the courts and their sense of responsibility, the commissioners are very careful to give the benefit of every doubt to the railroads, basing their decision on what they themselves regard as established beyond any reasonable doubt. Anyone who reads the reports on the New Haven system, whatever his views on regulation, must feel that the system has been brought to its present sad condition, not by regulation or agitation, but by speculation, personal ambition, and greed, such as the public is not willing to tolerate in the management of any vital industry, even a strictly private one.

Again, I recall with much sadness, and some amusement, a speech made by a high-minded and well-informed attorney of one of the chief divisions of that system. He is both intelligent and remarkably public-spirited; yet, after the open criticisms of the New Haven road were begun, but before the results of the recent investigations were made public, I heard him speak to a large body of college-bred men and bewail, almost with tears, the unjust and senseless agitation against the road he represented. He admitted freely that for many years the road had controlled the politics of a certain state, but he asserted that it had now reformed, and that during the session of the legislature then just closed, he had had complete charge of the legislative matters for the road in that state, and not a dollar had been spent illegally or improperly. He then entered upon a very severe, and somewhat sarcastic, arraignment of the prejudice and suspicion in the minds of the former legislators because they would not take his word for the fact that the company had reformed. In fact, he made these suspicions in the mind of the rural legislators almost a cause for despairing of the future of the republic. But when the official reports of the Interstate Commerce Commission and the Public Service Commission of Massachusetts came out, it appeared that the road in question had been spending vast sums of the people's money for "prayers from the hills," subsidizing newspapers throughout New England, and using other old-fashioned pioneer methods of "educating public opinion." In short, the company was playing the old game in the old way and putting up a lawyer of good reputation as a decoy.

If one of the keenest attorneys in the country (supposedly in charge professionally of the things of which he speaks) can be thus deceived by his employers—and I assume that he was deceived and spoke with righteous indignation—can we expect the public, shut out from all adequate sources of information and fed on a captive press, to take at face value the utterances of the railroad managers to the effect that they have reformed? The public is no longer willing to take the word of any man known to have been engaged in doing things which the public considers against public interest, to the effect that he has changed his methods, until he shows fruits meet for repentance. The public demands today all the essential facts, in order that it may judge for itself. Illustrations of this point might be adduced almost without number from official sources.

Take the latest government reports on some of the oldest and most respectable systems. If the official reports of the Interstate Commerce Commission in regard to the New York Central Railroad and the O'Gara Coal Company,¹ the Saline County Coal Company, and other coal companies can be trusted, the president of the road was playing with the treasury of the railroad exactly as if the treasury had been his own private property, and with a degree of speculation such as public opinion no longer indorses in the case of purely private property.

Take the decision of the Interstate Commerce Commission in the recent Lehigh Valley case.² The Commission finds that the Lehigh Valley Railroad Company was supporting the Lehigh Valley Coal Company, exactly as the New York Central Railroad supported the O'Gara Coal Company. Among other things, the Commission says: "Moreover, the Lehigh Valley Railroad Company has been carrying amongst its assets certificates of indebtedness of the Lehigh Valley Coal Company, amounting to \$10,537,000, upon which no interest is collected. Interest on this indebtedness would be sufficient to pay a 1 per cent dividend on the stock." It also charges that this company, which is so poverty-stricken that it is pleading for an advance in rates, is collecting in excess

¹ 63d Cong., 2d sess., House Document No. 1124, pp. 34-49 (June 9, 1914). Practically the same condition was found in all the coal-carrying roads.

² Document No. 1180, 29 I.C.C. 160.

rates alone an amount which, from 1903 to 1910, was sufficient to pay a 2 per cent dividend on the stock of the company. The road at the same time was playing its dividends up and down in a manner thoroughly demoralizing to the stock market and was meantime piling up an unjustifiably large surplus.

The American public has made up its mind that a railroad is too closely connected with the life and welfare of the citizen to be made a subject of private speculation, even for the benefit of the treasury of its own corporation, much less for the private benefit of its officers and outside enterprises in which the officers are interested as promoters and speculators:

The claim of the railroads is that they need increased freight rates in order to sustain their credit, to enable them to secure sufficient capital for needed extensions and improvements. Not only college students, but the average uneducated man, has always been led to believe that, other things being equal, the price of a commodity or a security will depend upon the amount of the supply. Whether we take the New Haven financing, or that marvelous and successful speculation on the Union Pacific under Harriman, or the equally successful speculation by the Great Northern in Northern Ore certificates, or the reports of the railroads themselves, the first thing that impresses any disinterested person is the enormous amount of railroad securities that have been offered in the last fifteen years. When we look at the improvements and extensions of the roads and equipment, important as these have been, we see at a glance that most of these issues have not been made for any improvement,¹ or extension of the road, or its service, but for acquiring properties, usually at excessive values, frequently in direct violation or marked evasion of law, and for the purpose of acquiring a monopoly. Look at the New Haven, the Frisco, the Rock Island, Chicago & Alton, or even at the successful speculation of Harriman on the Pacific systems. The public

¹ Brandeis, *Other People's Money*, p. 165. The Union Pacific system on June 30, 1912, had issued in fourteen years \$375,158,183 (of which \$46,500,000 had been refunded). The issues were mainly "to supply funds for engaging in illegal combinations or stock speculations" (*ibid.*, p. 139). The New Haven debts went up in nine years from \$14,000,000 to \$300,000,000, or an increase of \$286,000,000. On June 30, 1911, the system owed but \$10,000,000 short-term notes; on June 30, 1913, \$70,000,000.

raises the question, first, whether this pouring-out of securities was in any large measure in the public interest; next, whether it was not sufficient in itself to break the bond market, and increase the interest rate which the roads had to pay for money. Common American citizens, if not the railroad managers, are shrewd enough to disapprove of the issues for successful speculation such as Harri-man's and Hill's, quite as much as of the unsuccessful ones like Mellen's.

That general interest rates have gone up recently there can be no doubt. For example, the average rate paid by New York City on the issues of 1913 was 4.49 per cent against 3.89 per cent on the issues of 1908,¹ or a rise of six-tenths of 1 per cent. It may well be questioned whether rates on railroad bonds have risen more than this. If they have, the public may properly ask whether the increase has not been caused by the reckless and unnecessary issue of securities for purely speculative purposes, by foolish issuing of short-time notes in enormous quantities, and, not least, by the ceaseless cry of the railroads that they are on the verge of bankruptcy, into which they are all inevitably going if they do not get an early increase of rates. It is probable that the credit of any non-monopolistic industry would be irretrievably destroyed² if its managers for long periods of time uniformly proclaimed that they were on the verge of bankruptcy. It is also worthy of note that the roads started their campaigns for increased rates before the general interest rates had materially increased.

As the Belgians had rather die than submit to slavery and foreign domination, the American public had rather check prosperity

¹ W. F. Gephart, "Demand for Capital in Relation to the Interest Rate," *Washington University Studies*, Vol. I, Part II, p. 129. It appears that notwithstanding the enormous flooding of the market with railroad bonds mostly for purely speculative purposes—more than \$4,000,000,000 in ten years—the interest rate in 1909 was but 4.55 per cent against 3.90 per cent in 1899, an increase of but 65/100 of 1 per cent, as against a rise of 60/100 of 1 per cent in the case of New York City. Cf. I.C.C. Reports, Western Advance Rate case, p. 19.

² "Whatever of doubt has arisen in the public mind respecting the value of our railroad securities has come, we are convinced, rather from the too reckless policy of stock manipulators parading under the title of financiers, than from any course of governmental policy on the part of the American people."—20 I.C.C., 319 (February 22, 1911).

than to encourage or permit such speculation¹ in these industries. This seems infinitely more important to the public mind than the question whether the railroads shall earn a fair rate of dividend on their watered stock, or even on the money the owners have themselves put into the railroads. The public is suspicious of the railroads, and, whether dealing with the freight rates, with the Puget Sound Extension accounts, the New Haven, the Rock Island, the Frisco, the Lehigh Valley, and the Great Northern general financing, and Northern Ore certificates, or, in fact, with any important phase of any great system, the public discovers that every time the Interstate Commerce Commission makes a real investigation into the affairs of any road, good or bad, things are unearthed which the public is not willing to tolerate, and this necessarily makes it suspect that the whole philosophy and theory of management is that of the old speculative, unregulated days. The secrecy and confusion of accounts add to this suspicion.² In the face of questions of such dominant influence—questions of absolutism in industry—the questions of a fair rate on a fair valuation, of necessary extensions, even of general prosperity, sink into insignificance in the public mind. This is the strife, this is the controversy, this is the attitude of the public; and until railroad managers can have instilled into their hearts more respect for popular opinion, and for real governmental regulation the strife must go on,³ and the whole country may be brought to the condition in which Texas finds itself to-day. When that happens, if it should happen, the results will be infinitely worse than in Texas, because the railroad managers have been able to do some building in Texas by virtue of the fact that they operate in foreign territory and can

¹ "It is not necessary today that opportunity should be given for the accumulation of enormous fortunes," 15 I.C.C. 417.

² "It would be difficult to devise a schedule better intended to confuse and to conceal than that employed in the development and operation of the Great Northern Railway System."—15 I.C.C. 405. On the reluctance of railroad officers to reveal the facts in regard to railroad management see 63d Cong., 2d sess., Senate Document No. 544, p. 1, and pp. 97-101; and 31 I.C.C. 225.

³ "It is a chimerical hope to overbear or outnumber the middle class: whatever modes of voting, whatever redistribution of the constituencies are really necessary for placing the government in their hands, those, whether we like it or not, they will assuredly obtain."—J. S. Mill, *Dissertations*, II, 155.

thus ignore Texas laws. No foreign territory will be available as a basis of operations when the railroads of all the states are involved.

To sum up, the difficulty is not one of individual morals or of personal character, but one of social philosophy. Those in control of our railroads want to manage them, use them, and speculate with them, as everybody speculated with purely private property in this country two generations ago. They resent, with genuine indignation, any proposition for government action that looks toward checking them in their desires and methods of doing business. They regard themselves as experts and their critics as demagogues and fanatics. They consider such suggestion as the violation of the most sacred rights of the individual. They ask, Shall one not be allowed to do as he pleases with his own?¹ In the judgment of the average railroad men, anything else savors of tyranny, oppression, fanaticism, socialism, and anarchy. They regard such attacks as the beginning of the end of civilization.

On the other hand, public opinion has come round to believe that even in the case of the strictest private property the idea of private property and the law relating thereto must be so modified as to prevent anyone from using his private property so as to injure the common welfare.² Furthermore, public opinion now supports the law in declaring that the industries now under consideration are no longer to be regarded as private property. Nor, under this view, is property affected with a public interest to be handled in the way in which we still permit private property to be treated. Above all, the public has made up its mind, once for all, that these industries are too intimately connected with the

¹ Careful students are more and more feeling that there is a fundamental philosophic contradiction between private ownership with gain as its motive and the present demand that the railroads be used for the widest service with general social ends in view. It may prove in the end that the railroads are right in declaring that such regulation destroys the objects of private investments; cf. Ely, *op. cit.*, I, 348-49: "We are endeavoring to unite two antagonistic principles, as is observed when we place together the expressions *private* property and *public* utilities." Again, on p. 224, Ely says: "But social purpose is like geological force: it sweeps majestically on, over-riding all obstacles and shaping all institutions to its ends."

² That this is the only workable theory of property is clearly shown by the long list of authorities cited by Ely, *op. cit.*, I, 156-64.

economic welfare of the community and of all the citizens to justify the use of this property for speculative purposes, irrespective of the form that speculation may take. The insistent public demand is that this property be used for conscious social ends rather than for private speculation or even as a source of private fortunes.

The public demand is, then, that the railroads be run as railroads and for the furnishing of transportation. The public also believes that if the roads are managed as mere transportation agencies, and not as means of developing mines and other property speculatively, the railroad managers will find quite enough to do to serve the public, to conserve their own resources, and in general to make ends meet, and to perform their duty as servants of the public. Furthermore, the public, if it can get an adequate and non-discriminating transportation service, is perfectly willing to leave politics, prosperity, and the development of the country to Providence and the people. Indeed, the public would perhaps be willing to leave the education of public opinion to others than the railroads, and as for "prayers from the hills," the public is apparently losing interest in the general subject of prayers, and demanding deeds, while, so far as interest still remains in prayers, the public would gladly place this burden elsewhere than on the already overburdened railroads.

The public would like to see what financial results would come from a policy under which no issues of securities would be made or attempted, except for improving the transportation facilities, and where all the services rendered should be properly charged for and the charges collected. How much the income of the roads could be increased and the outgo lessened no one knows and the public is very slow to estimate.¹

The Interstate Commerce Commission has time and again called attention to the relation of this point to the demand for

¹ The Interstate Commerce Commission finds illegal free passes used in Tennessee on two small systems amounting to about \$500,000 a year, while one road in Utah allowed over 7,000 trips on annual and trip passes in one month (31 I.C.C. 261, 264, and 26 I.C.C. 498).

The Commission says, p. 264: "Such lists reveal the manner in which these carriers have dipped into practically every domain of public and private life through the instrumentality of the free pass. . . . The lack of morality reflected by the facts here compiled is a menace to the institutions of a free people."

increased rates. In the Industrial Railway case (29 I.C.C. 217 [1914]), it says:

Indeed the very carriers that are augmenting their expense accounts and dissipating their revenues in this manner to the extent of many millions are now complaining that their present earnings are insufficient.

And further:

nevertheless before they may fairly ask the general public to share further in carrying their burdens it is manifest that the railroads must themselves properly conserve their sources of revenue by making every service rendered by them contribute reasonably to their earnings.¹

In the face of such unquestioned facts as have come to the public notice, the people are not ready to improve railroad credit by an increase of rates, if that increased credit is to be a basis of security issues for illegal or speculative purposes. The public looks upon such a move as creating an endless-chain arrangement, where each increase furnishes the occasion and basis for the next. The people have discovered that it required large issues to pay even the bankers' commissions for the speculation to say nothing of the public expense of checking and undoing the illegal acts.²

Again, notwithstanding the complaints the roads make of inadequate rates, and of oppression by public opinion and by governmental action, it is generally believed that governmental action, by checking the granting of free passes, and local and personal discriminations, and putting decided limitation on competition, has added greatly to the total income of the roads, and that much more has been gained by the roads by these changes than has been lost by any compulsory reduction of rates. In other

¹ The losses on improper allowances to the industrial railways above are estimated at \$15,000,000 per year, in official classification territory alone (29 I.C.C. 266).

So of the tap-lines (logging roads); the railroads make to these lines allowances estimated by the Commission at from \$50,000,000 to \$60,000,000 a year, most of this being in the nature of a rebate, or unjust discrimination, to favored shippers (23 I.C.C. 278, 338; 32 I.C.C. 131).

Time does not permit me to go into other similar devices for lessening income or increasing expenditure for improper purposes, such as trap-car service, free lightering service, free tunnel service, free storage, free loading and unloading, contracts unduly favorable to private car-owners, express companies, sleeping-car companies, and so on almost indefinitely.

² For instance, it took two fat commissions to bankers to combine the Pacific roads illegally, and likewise two commissions to uncombine them. Brandeis, *op. cit.*, p. 173.

words, such apparent reduction of general freight rates results from a lowering of the average income per unit of transportation by taking on a larger proportion of low-grade freight at rates fixed voluntarily by the carriers under the impulse of competition and the desire to get business, rather than from any outside pressure. Nor is the public convinced that this voluntary lowering of the average ton-mile charge by the roads has been brought about by any scientific study of the situation, or even that much of the freight may not thus be voluntarily carried by the roads at an actual loss. It may be that what the roads really need is not a general increase, but a mere readjustment of rates and an abolition of all non-remunerative rates.

Finally, the public is not willing to accept the criticism that it is demanding of the roads perfect administration such as may not rationally be required or expected of imperfect and fallible men. The public knows that all men make mistakes. What it demands of those in charge of our railroads is that they become trustees for the stockholders and seek to serve the public with proper transportation. They must no longer try to play Providence by developing the country politically or materially in a speculative, autocratic, or absolute way.

The public has made up its mind, once and for all, that no individual and no group of individuals can safely be judge in its own case, that effectual regulation is the only possible alternative to public ownership. It is not a change of morals, but a change of philosophy—of judgment—that is demanded. Everybody recognizes that vast improvement has been made in the last few years, but the belief is general that this has been done strictly as a result of the compulsion of public opinion and of the government; that those subject to this compulsion still feel as greatly outraged by it as a people unjustly attacked and conquered by arms feels toward its conquerors. They know they are hurt, but they are not ready to submit and to square their future action with their conquerors' views. On the contrary, they are fighting for what they consider an important principle.

The question in the public mind is simply: Are the railroads ready to show their full hands, to conduct their enterprises soberly

as public services, and, in general, to square their action completely with prevailing doctrines of law, ethics, economics, and social welfare? When they have done this, if they find the game not worth the candle, are they willing to transfer their property to the public for that just compensation guaranteed to them by the Constitution, or will they insist on trying to run the roads in a manner at variance with the deliberate, sober public opinion?

Private ownership with public regulation may, in fact, be logically unsound¹ under present conditions, and may prove in the end unsatisfactory to both parties. However, if I am any judge of public opinion, the days of unregulated privately owned railroads or other monopolies are ended, and if public regulation proves, in the issue, incompatible with private profits, then the form of ownership will change for good or for ill.

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¹ Brooks Adams in *The Tiltle to Property*, p. 18, brings this out: "Yet if monopolies are to submit to state regulation in prices on the one hand, and at the same time, on the other, are to be subjected to unrestrained attacks by workmen for advances in wages while workmen are indifferent to profits, it is self-evident that sooner or later capital must, to protect itself, either seize upon the rate-regulating power, or else be ground between the upper and the nether millstone."